

Harvey Rosenfield, SBN 123082
Pamela Pressley, SBN 180362
Daniel L. Sternberg, SBN 329799
Ryan Mellino, SBN 342497
CONSUMER WATCHDOG
6330 San Vicente Blvd., Suite 250
Los Angeles, CA 90048
Tel. (310) 392-0522
Fax (310) 392-8874
harvey@consumerwatchdog.org
pam@consumerwatchdog.org
danny@consumerwatchdog.org
ryan@consumerwatchdog.org

Attorneys for CONSUMER WATCHDOG

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Rate Application of

Liberty Insurance Corporation,

Applicant.

File No.: 23-2333, PA-2023-00016

**CONSUMER WATCHDOG'S AMENDED
PETITION FOR HEARING, PETITION
TO INTERVENE, AND NOTICE OF
INTENT TO SEEK COMPENSATION**

[Ins. Code §§ 1861.02, 1861.05, and 1861.10;
Cal. Code Regs, tit. 10, §§ 2653.1, 2661.2 and
2661.3]

1 On October 3, 2023, the Department issued an Order Denying Consumer Watchdog's
2 Petition to Intervene with Leave to Amend. Pursuant to that Order, Consumer Watchdog timely
3 submits this Amended Petition for Hearing, Petition to Intervene, and Notice of Intent to Seek
4 Compensation.¹

5 Accordingly, Consumer Watchdog hereby requests that the Insurance Commissioner
6 notice a public hearing pursuant to Insurance Code sections 1861.05, subdivisions (a) and (c),
7 and 1861.10, subdivision (a), on the issues raised in this petition regarding the above-referenced
8 Rate Application of Liberty Insurance Corporation ("Liberty" or "Applicant"), at which time
9 Applicant will be directed to appear and respond to the issues raised in this petition. Consumer
10 Watchdog also hereby requests that it be granted leave to intervene in the proceeding on
11 Applicant's Rate Application pursuant to Insurance Code section 1861.10(a). Consumer
12 Watchdog intends to seek compensation in this proceeding, and, pursuant to 10 CCR section
13 2661.3 subdivision (c), Consumer Watchdog's proposed budget is attached hereto as Exhibit A.

14 In support of its petition, Consumer Watchdog alleges:

15 **I. THE APPLICATION**

16 1. On or about July 20, 2023, Applicant filed a Prior Approval Rate Application with
17 the California Department of Insurance ("CDI"), seeking approval of an overall 29.1% rate
18 increase to its Dwelling line of business (File No. 23-2333 ["the Application"]). This application
19 follows a rate increase of 5.8% that took effect on June 2, 2020 and a 7.5% rate increase that took
20 effect on January 1, 2019.

21 2. On or about August 4, 2023, the public was notified of the Application.
22
23
24

25 ¹ Consumer Watchdog submits that both its original Petition to Intervene, filed September 18,
26 2023, and this Amended Petition to Intervene comply with the requirements for intervention
27 under California Code of Regulations, title 10 ("10 CCR"), sections 2661.2 and 2661.3 by stating
28 "the specific issues to be raised and the positions to be taken on each issue *to the extent then known*." (Emphasis added.) Each of the issues to be raised relates to a component of the
ratemaking formula at 10 CCR § 2644.1 et seq., and those issues are directly relevant to
determining whether Applicant's requested rate increase is excessive.

II. PETITIONER

3. Petitioner Consumer Watchdog is a nonprofit, nonpartisan, public interest corporation organized to represent the interests of consumers and taxpayers. A core focus of Consumer Watchdog's advocacy is the representation of the interests of insurance consumers and policyholders, particularly as they relate to the implementation and enforcement of Proposition 103, in matters before the Legislature, the courts, and the CDI.

4. Consumer Watchdog's founder authored Proposition 103 and led the successful campaign for its enactment by California voters in 1988. Consumer Watchdog's staff and consultants include some of the nation's foremost consumer advocates and experts on insurance ratemaking matters.

5. Consumer Watchdog has served as a public watchdog with regard to insurance rates and insurer rollback liabilities under Proposition 103 by: monitoring rollback settlements and the status of the rollback regulations; reviewing and challenging rate filings made by insurers seeking excessive rates; participating in rulemaking and adjudicatory hearings before the CDI including the rulemaking proceeding that led to the adoption of the mitigation discount and wildfire risk model regulations in 10 CCR § 2644.9; and educating the public concerning industry underwriting and rating practices, their rights under Proposition 103, and other provisions of state law. Consumer Watchdog has also initiated and intervened in actions in state court and appeared as amicus curiae in matters involving the interpretation and application of Proposition 103 and the Insurance Code.²

² For example, *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243; *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473; *Spanish Speaking Citizens' Foundation v. Low* (2000) 85 Cal.App.4th 1179; *Donabedian v. Mercury Insurance Co.* (2004) 116 Cal.App.4th 968; *State Farm Mut. Auto. Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029; *The Found. for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354; *Ass'n of Cal. Ins. Cos. v. Poizner* (2009) 180 Cal.App.4th 1029; *Mercury Cas. Co. v. Jones* (2017) 8 Cal.App.5th 561; and *Mercury Ins. Co. v. Lara* (2019) 35 Cal.App.5th 82; and *State Farm General Ins. Co. v. Lara* (2021) 71 Cal.App.5th 197.

6. Consumer Watchdog has initiated and intervened in numerous proceedings before the CDI related to the implementation and enforcement of Proposition 103's reforms, including over 140 such proceedings in the last twenty years. In every rate proceeding that has resulted in a final decision and in which Consumer Watchdog sought compensation from 2003–2022, the Commissioner found that Consumer Watchdog made a substantial contribution, meaning that its participation was separate and distinct from any other party and that it presented relevant issues, evidence, and arguments that resulted in more credible, non-frivolous information being available to the Commissioner in making his final decision.

III. ISSUES AND EVIDENCE TO BE PRESENTED AND POSITIONS OF PETITIONER

7. In the rate proceeding initiated by Consumer Watchdog's petition, Consumer Watchdog will present and elicit evidence to show that the proposed rates and rule and rating plan changes result in rates that are excessive and/or unfairly discriminatory in violation of Insurance Code section 1861.05, subdivision (a), which provides that "[n]o rate shall be approved or remain in effect which is excessive, inadequate, [or] unfairly discriminatory." Additionally, Consumer Watchdog will present and elicit evidence that Applicants' proposed rates violate 10 CCR § 2644.1, which provides that "[n]o rate shall be approved or remain in effect that is above the maximum permitted earned premium as defined in section 2644.2" and their rating plan and rule changes potentially violate 10 CCR § 2644.9's requirements relating to the use of wildfire risk models and the implementation of mandatory wildfire risk mitigation factors.

8. Based on Consumer Watchdog's preliminary analysis in consultation with its actuarial expert and the information contained in the Application, Consumer Watchdog has identified the following issues with the Application on which it intends to present and elicit evidence as set forth in (a)–(b) below. Each of these issues is directly relevant to determining whether Applicant's proposed rate increase is excessive under Insurance Code section 1861.05(a). Consumer Watchdog intends to request further information on these issues through informal/formal discovery from the Applicant and reserves the right to develop and refine its positions as more information is made available.

- 1 a. Loss and Premium Trends (10 CCR § 2644.7): Applicant's frequency and severity
2 trend selections result in excessive net trends that overstate the projected losses,
3 causing an inflated rate indication. The selected 12-point Reported/Paid frequency and
4 severity trends result in a combined loss trend of +16.4%, the third-highest of the 20
5 possible loss trend selections in the Standard Exhibit template. Combined with the 12-
6 point premium trend, the overall net trend selected by Liberty is +9.7%, also the third-
7 highest out of 20 possible values. The severity trend values are particularly leveraged
8 by the unusually high paid severities in the two latest data quarters (2022Q4 and
9 2023Q1). Calculating the 12-point net trend excluding those points from frequency,
10 severity, and premium yields a Reported/Paid net trend of +4.1%, which is much more
11 in line with the trajectory of Applicant's recent historical experience exclusive of the
12 two latest points. To get close to this more reasonable net trend value, based on its
13 actuary's preliminary analysis, CWD believes the 20-point net trend of +3.4% is more
14 actuarially appropriate. Based on this preliminary analysis, Applicant does not
15 demonstrate that the selected trend factors and trend data period used are the most
16 actuarially sound.
- 17 b. Improper / Unsupported Excluded Expenses (10 CCR § 2644.10): Applicant has not
18 shown that all of its institutional advertising expenses have been reflected in the
19 excluded expense provision. CWD was unable to locate within the filing materials any
20 support for the institutional/non-institutional advertising split shown on the Excluded
21 Expenses tab of the Rate Template. CWD intends to request such verification since
22 Applicant's institutional advertising expenses stated on page 4.1 of the Application are
23 about 1% or less of total advertising, which seems unlikely given Applicant's high-
24 visibility profile in the marketplace. There may also be excluded expenses for other
25 categories that should be reflected in the rate calculation but were not adequately
26 reflected in the filing; there is no way to determine this other than to request
27 verification from Applicant that all excluded expenses are shown in the filing.
- 28 9. This petition is based upon Consumer Watchdog's preliminary analysis of the

1 Application. Thus, Consumer Watchdog reserves the right to modify, withdraw, and/or add issues
2 for consideration and its positions on each issue as more information becomes available,
3 including but not limited to allegations related to violations of Insurance Code section 1859 if it is
4 discovered that Applicant has willfully withheld information from, or knowingly given false or
5 misleading information to, the commissioner or to any rating organization, advisory organization,
6 insurer or group, association or other organization of insurers that will affect its rates, rating
7 systems, or premiums that are the subject of this filing.

8 **IV. AUTHORITY FOR PETITION AND GRANTING REQUEST FOR A HEARING**

9 10. The authority for this petition for hearing is Insurance Code section 1861.10,
10 subdivision (a), which grants “any person” the right to initiate or intervene in a proceeding
11 permitted or established by Proposition 103 and the right to enforce Proposition 103. Specifically,
12 as stated above, Consumer Watchdog initiates this proceeding to enforce Insurance Code sections
13 1861.05 and 1861.07.

14 11. Additionally, a hearing is authorized pursuant to Insurance Code section 1861.05,
15 subdivision (c), which allows “a consumer or his or her representative” to request a hearing on a
16 rate application and 10 CCR § 2653.1, which provides that “any person, whether as an individual,
17 representative of an organization, or on behalf of the general public, may request a hearing by
18 submitting a petition for hearing.”

19 12. This petition is timely because it is filed within fourteen (14) days of the
20 Commissioner’s October 3, 2023 Order Denying Consumer Watchdog’s Petition to Intervene
21 with Leave to Amend.

22 **V. INTEREST OF PETITIONER**

23 13. Consumer Watchdog’s interest in the above-captioned proceeding is to ensure that
24 Applicant’s homeowners insurance policyholders are charged rates and premiums that comply
25 with the provisions of Insurance Code section 1861.05(a)’s requirement that “no rate shall be
26 approved or remain in effect which is excessive, inadequate, [or] unfairly discriminatory or
27 otherwise in violation of this chapter,” and the requirements contained in the regulations
28 promulgated thereunder. For many homeowners, their home is their most valuable asset and they

are required to purchase homeowners insurance by their mortgage lenders. Consumers who are overcharged by insurers for this insurance coverage and/or arbitrarily non-renewed, even when they have undertaken significant wildfire mitigation efforts to protect their homes and lower their risk of loss, are part of Consumer Watchdog’s core constituency.

14. As noted in paragraphs 3–6 above, Consumer Watchdog’s staff and consultants have substantial experience and expertise in insurance rate matters, which Consumer Watchdog believes will aid the CDI in its review of the Application and aid the Commissioner in making his ultimate decision as to whether to approve or disapprove the requested rates. As noted in paragraph 6 above, the Commissioner found that Consumer Watchdog made a substantial contribution to his decisions in every rate proceeding that has resulted in a final decision and in which Consumer Watchdog sought compensation from 2003–2022. If leave to intervene is granted, Consumer Watchdog will participate fully in all aspects of this proceeding.

15. Consumer Watchdog also has an interest in assuring that Applicant, the CDI, and the Insurance Commissioner comply with the laws enacted by the voters under Proposition 103, and the rules and regulations that implement those laws.

VI. AUTHORITY FOR PETITION TO INTERVENE

16. The authority for Consumer Watchdog’s petition to intervene is Insurance Code section 1861.10, subdivision (a), which grants “any person” the right to “initiate or intervene in any proceeding permitted or established pursuant to this chapter [Chapter 9 of Part 2 of Division 1 of the Insurance Code] . . . and enforce any provision of this article.” This proceeding is a proceeding to enforce Insurance Code sections 1861.05 and 1861.07 pursuant to Insurance Code section 1861.10(a), and hence is a proceeding both “permitted” and “established” by Chapter 9. Per the voters’ instruction, the mandatory right to intervene under section 1861.10(a), like all the provisions of Proposition 103, must be “liberally construed and applied in order to fully promote its underlying purposes.” (Prop. 103, § 8.) Thus, section 1861.10 must be interpreted and applied broadly in a manner to fully encourage consumer participation. (*Ibid*; see also *Ass’n of California Ins. Cos. v. Poizner*, *supra*, 180 Cal.App.4th at 1052 [stating “the goal of fostering consumer participation in the administrative rate-setting process” as “one of the purposes of

1 Proposition 103”].) The broad intervention standard enacted by section 1861.10 ensures that
2 consumers will be able to participate in proceedings *independently of the Department staff* who
3 may take different positions or emphasize different issues in the proceeding.

4 17. This petition to intervene is also authorized by 10 CCR § 2661.1 et seq. In
5 compliance with 10 CCR § 2661.3, the specific issues to be raised and positions to be taken by
6 Consumer Watchdog, *to the extent known at this time*, are set forth in paragraph 8 *supra*. Each of
7 these issues relate directly to specific standards and requirements under the ratemaking formula at
8 10 CCR § 2644.1 et seq. and thus are directly relevant to ultimately determining whether
9 Applicant’s requested rate is excessive or otherwise unjustified. Although consumer presence in
10 departmental proceedings typically results in significant reductions to policyholders’ rates, the
11 amount of savings for each individual consumer is outweighed by the time and expense of hiring
12 individual counsel or an advocacy group to protect his or her rights. Thus, an independent
13 organization like Consumer Watchdog introduces a voice that otherwise would be absent from
14 this proceeding.

15 **VII. PARTICIPATION OF CONSUMER WATCHDOG**

16 18. Consumer Watchdog verifies, in accordance with 10 CCR § 2661.3, that it will be
17 able to attend and participate in this proceeding without unreasonably delaying this proceeding or
18 any other proceedings before the Insurance Commissioner.

19 **VIII. INTENT TO SEEK COMPENSATION**

20 19. The Commissioner has awarded Consumer Watchdog compensation for its
21 reasonable advocacy and witness fees and expenses in past departmental proceedings. The
22 Commissioner issued Consumer Watchdog’s latest Finding of Eligibility on July 26, 2022,
23 effective for two years as of July 12, 2022. Consumer Watchdog was previously found eligible to
24 seek compensation on August 25, 2020, effective as of July 12, 2020; July 12, 2018; July 14,
25 2016; July 24, 2014; July 24, 2012; July 2, 2010; August 25, 2008; July 14, 2006; July 2, 2004;
26 June 20, 2002; October 1, 1997; September 26, 1995; September 27, 1994; and September 13,
27 1993.
28

1 20. Consumer Watchdog intends to seek compensation in this proceeding. Pursuant to
2 10 CCR § 2661.3(c), Consumer Watchdog's estimated budget in this proceeding is attached
3 hereto as Exhibit A. Consumer Watchdog has based its estimated budget on several factors
4 including: (1) the technical and legal expertise needed to address these issues; (2) its current best
5 estimate of the time needed to participate effectively in these proceedings, taking into account the
6 time already expended by Consumer Watchdog staff and its consulting actuary and an estimate of
7 time needed to complete remaining tasks through completion of a noticed evidentiary hearing;
8 and (3) past experience in similar rate proceedings before the CDI. The estimated budget is
9 reasonable and the staffing level is appropriate, given the expertise that Consumer Watchdog and
10 its consultants bring to these proceedings when the issues involved are issues at the very core of
11 its organizational mission and strike at the very heart of Proposition 103 itself. The budget
12 presented in the attached Exhibit A is a preliminary estimate, and Consumer Watchdog reserves
13 the right to amend its proposed budget as its expenses become more certain, or in its request for
14 final compensation. Consumer Watchdog will give notice of such modifications as soon as
15 practicable after it discovers the need to revise its estimates and shall comply with the budget
16 revision requirements in the relevant intervenor regulations.

17 WHEREFORE, Consumer Watchdog respectfully requests that the Insurance
18 Commissioner GRANT its petition for hearing and petition to intervene in the proceeding.

19
20 DATED: October 16, 2023

Respectfully submitted,
Harvey Rosenfield
Pamela Pressley
Daniel L. Sternberg
Ryan Mellino
CONSUMER WATCHDOG

21
22
23
24
25 By: *Pamela Pressley*
26 Pamela Pressley
27 Attorney for CONSUMER WATCHDOG
28

**VERIFICATION OF PAMELA PRESSLEY IN SUPPORT OF CONSUMER
WATCHDOG'S PETITION FOR HEARING, PETITION TO INTERVENE, AND
NOTICE OF INTENT TO SEEK COMPENSATION**

I, Pamela Pressley, verify:

1. I am Senior Staff Attorney for Consumer Watchdog. If called as a witness, I could and would testify competently to the facts stated in this verification.

2. I personally prepared the pleading titled “Consumer Watchdog’s Petition for Hearing, Petition to Intervene, and Notice of Intent to Seek Compensation” filed in this matter. All of the factual matters alleged therein are true of my own personal knowledge, or I believe them to be true after conducting some inquiry and investigation.

3. Pursuant to California Code of Regulations, title 10, section 2661.3, Consumer Watchdog attaches as Exhibit A its estimated budget in this proceeding.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed October 16, 2023, at Los Angeles, California.

Pamela Pressley
Pamela Pressley

**EXHIBIT A
PRELIMINARY BUDGET**

ITEMS

ESTIMATED COST

1. Consumer Watchdog Attorneys and Paralegal

Pamela Pressley (Senior Staff Attorney) @ \$595 per hour, 100 hours \$59,500

- Draft and edit petition for hearing and petition to intervene; supervise Consumer Watchdog counsel; oversee preparation of motions, briefing; confer with Consumer Watchdog counsel and outside experts regarding legal and evidentiary issues; participate in discussions with CDI and Applicant's counsel; assist in all phases of proceeding, evidentiary hearing, and preparation of post-hearing briefing.

Daniel L. Sternberg (Staff Attorney) @ \$350 per hour, 200 hours \$70,000

- Confer with Consumer Watchdog counsel and outside experts regarding legal and evidentiary issues; participate in discussions with CDI and Applicant's counsel; participate in briefing legal issues; conduct discovery, preparation of motions, and preparation for evidentiary hearing; participate in examination of witnesses and all phases of evidentiary hearing and post-hearing legal briefing; prepare request for compensation.

Ryan Mellino (Staff Attorney) @ \$250 per hour, 200 hours \$50,000

- Confer with Consumer Watchdog counsel and outside experts regarding legal and evidentiary issues; participate in discussions with CDI and Applicant's counsel; participate in briefing legal issues; conduct discovery, preparation of motions, and preparation for evidentiary hearing; participate in examination of witnesses and all phases of evidentiary hearing and post-hearing legal briefing; prepare request for compensation.

Kaitlyn Gentile (Paralegal) @ \$200 per hour, 50 hours \$10,000

- Draft and edit petition for hearing and petition to intervene; assist with discovery and preparation of motions and briefs; prepare request for compensation.

Harvey Rosenfield (Of Counsel) @ \$695 per hour, 15 hours \$10,425

- Supervise Consumer Watchdog counsel and participate in strategy discussions.

2. Expert Witness: Ben Armstrong

Ben Armstrong, Staff Actuary @ \$425 per hour, 100 hours \$42,500

- Staff actuary to review all discovery documents; prepare actuarial analysis; participate in meet and confers with the parties as needed; prepare written testimony; testify and assist attorneys in preparation for cross-examination of insurer's expert witnesses.

3. Consumer Watchdog Expenses

Office expenses (photocopies, facsimile, telephone calls, postage, etc.)\$2,000

Travel (ground transportation; airfare; hotel)\$5,000

TOTAL ESTIMATED BUDGET: \$249,425